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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,334	03/14/2001	Stephen J. Brown	HERO-1-1111	6688
32042	7590	03/06/2006	EXAMINER	
PATTON BOGGS LLP 8484 WESTPARK DRIVE SUITE 900 MCLEAN, VA 22102			KOPPIKAR, VIVEK D	
		ART UNIT	PAPER NUMBER	3626

DATE MAILED: 03/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/810,334	BROWN, STEPHEN J.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Vivek D. Koppikar	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 5/23/05.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 March 2001 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>7/19/01</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

*Status of the Application*

1. This communication is in response to the letter dated May 23, 2005 from applicants requesting that the suspension period end and that prosecution of this application commence. Therefore, claims 1-19 have now been examined in this application. The Information Disclosure Statement (IDS) statement filed on July 9, 2001 has also been acknowledged.

*Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3, Claims 1-19 are rejected under 35 U.S.C. 102(b) as being unpatentable by US Patent Number 5,897,493 to Brown.

(A) As per claim 1, Brown teaches a system for coding and updating a patient profile and for providing customized health information to an individual (Brown: Abstract), said system comprising:

a server (Brown: Col. 4, Ln. 43-51);

a remote interface for entering in said server questions to be answered by said individual (Brown: Col. 4, Ln. 51-54); and a remotely programmable apparatus for interacting with said individual, said remotely programmable apparatus being in communication with said server via a communication network (Brown: Col. 4, Ln. 56-60);

wherein said server comprises:

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a questionnaire generator for generating a questionnaire comprising questions for determining at least one of a physical condition of said individual, a mental condition of said individual, and a behavior of said individual, and for transmitting said questionnaire from said server to said remotely programmable apparatus (Figures 2 and 5 ((94) and 98)) and Col. 5, Ln. 7-19);

a data gatherer connected to said questionnaire generator for receiving from said remotely programmable apparatus said individual's physical condition into a physical condition profile, said individual's mental condition into a mental condition profile, said individual's behavior into a behavioral profile for said individual according to responses to the questionnaire (Brown: Col. 8, Ln. 19-23);

a script generator connected to said data gatherer for generating a customized script program from questions based on said individual's physical, mental, and behavioral profiles, and for transmitting said customized script program to said remotely programmable apparatus; a report generator for generating a report comprising said individual's physical, mental, and behavioral profiles and said assigned customized script program (Brown: Figure 5 and Col. 5, Ln. 28-39); and

a database connected to said questionnaire generator, said data gatherer, and said script generator for storing said questionnaire, said profiles, and said script program (Brown: Col. 5, Ln. 13-19);

and wherein said remotely programmable apparatus (Brown: Col. 4, Ln. 55-60) comprises:

a communication means for receiving said questionnaire and said script program from said server and for transmitting said responses to said server (Brown: Col. 4, Ln. 47-51);

a user interface for communicating said questionnaire and said script program to said individual and for receiving said responses (Brown: Col. 4, Ln. 49-51);

a memory for storing said questionnaire, said script program, and said responses (Brown: Col. 7, Ln. 1-9); and

a processor connected to said communication means, said user interface and said memory for executing said questionnaire and said script program to communicate said questions to said individual, to receive said responses to said questions, and to transmit said responses to said server (Brown: Col. 7, Ln. 11-17).

(B) As per claim 2, in Brown after the responses are transmitted to said server, additional physical, mental, and behavioral profiles are created and an additional script program is created (Brown: Col. 5, Ln. 63-Col. 6, Ln. 4).

(C) As per claim 3, in Brown the questionnaire generator further comprises a registration means for registering a name of said individual, a language of said individual, and a current health condition of said individual; and said questionnaire generator and said script generator comprise a tailoring means for tailoring said questionnaire and said script program in dependence upon said language and said current health condition of said individual (Brown: Col. 4, Ln. 59-60).

(D) As per claim 4, in Brown the questionnaire generator further includes a confirmation means for confirming with said individual said physical profile, mental profile, and behavioral profile (Brown: Col. 8, Ln. 65-Col. 9, Ln. 8).

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(E) As per claim 5, in Brown the script program comprises: a request for clinical data; a monitoring question; and educational information (Brown: Col. 5, Ln. 9-15 and Ln. 33-42).

(F) As per claim 6, in Brown the educational information comprises means for accessing an external source of additional educational information and means for transferring said additional educational information from said external source to said remotely programmable apparatus (Brown: Col. 10, Ln. 8-15).

(G) As per claim 7, in Brown the data relating to said physical condition of said individual comprise measurements which are received from a monitoring device connected to said remotely programmable apparatus (Brown: Col. 4, Ln. 61-Col. 5, Ln. 6).

(I) As per claim 9, in Brown the data related to said physical condition of said individual comprises electronic medical records received from a health-care provider of said individual (Brown: Col. 8, Ln. 5-24).

(J) As per claim 10, Brown teaches a method for providing customized health information to an individual to induce a modification in a health-related behavior of said individual (Brown: Abstract), said method comprising:

exchanging data with a server through a communication network, wherein said data includes a questionnaire and a script program executable by said remotely programmable apparatus to communicate questions to said individual, to receive responses to said questions, and to transmit said responses to said server (Brown: Col. 4, Ln. 51-60);

storing said questionnaire, said script program, and said responses to said questions; communicating said questions to said individual and for receiving said responses to said questions (Figures 2 and 5 ((94) and 98)) and Col. 5, Ln. 7-19); and

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executing said questionnaire and said script program (Brown: Col. 5, Ln. 39-51); transferring from said server to said remotely programmable apparatus said questionnaire containing questions for determining a physical condition, a mental condition, and behavior of said individual (Brown: Col. 5, Ln. 55-62);

receiving in said server responses to said questions entered by said individual from said remotely programmable apparatus (Brown: Col. 5, Ln. 55-58);

generating from said responses a physical condition, a mental condition, and a behavior of said individual (Brown: Figure 5 and Col. 5, Ln. 28-39)

translating said physical condition, mental condition, and behavior into physical, mental, and behavioral profiles of said individual (Brown: Figure 5 and Col. 5, Ln. 28-39);

generating a customized script program for said individual based on said physical, mental, and behavioral profiles (Brown: Figure 2 (54) and Col . 6, Ln. 26-34); and

transferring said customized script program to said remotely programmable apparatus (Figure 2 (26) and Col. 6, Ln. 25-30).

(K) As per claim 11, Brown teaches creating additional physical, mental, and behavioral profiles and an additional script program after said server receives said responses (Brown: Col. 5, Ln. 63-Col. 6, Ln. 4).

(L) As per claim 12, Brown teaches registering a name of said individual, a language of said individual, and said current health condition of said individual in said server prior to transferring said questionnaire; and tailoring said questionnaire and said script program to said individual in dependence upon said language and said current health condition of said individual (Brown: Col. 4, Ln. 59-60).

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(M) As per claim 13, in Brown the script program comprises: a request for clinical data; a monitoring question; and educational information (Brown: Col. 5, Ln. 9-15 and Ln. 33-42).

(N) As per claim 14, in Brown the educational information comprises means for accessing an external source of additional educational information and means for transferring said additional educational information from said external source to said remotely programmable apparatus (Brown: Col. 10, Ln. 8-15).

(O) As per claim 15, Brown further comprising generating a report comprising said individual's physical, mental, and behavioral profiles and said assigned customized script program (Brown: Col. 6, Ln. 25-34).

(P) As per claim 16, in Brown the data relating to said physical condition comprises measurements which are received by said server from a monitoring device connected to said remotely programmable apparatus (Brown: Col. 4, Ln. 61-Col. 5, Ln. 6 and Col. 6, Ln. 25-34).

(R) As per claim 18, in Brown the data relating to said physical condition of said individual comprises electronic medical records received from a health-care provider of said individual (Brown: Col. 8, Ln. 5-24).

(S) As per claim 19, in Brown teaches a clinician computer system, the clinician system in communicating with one or more patient device (Brown: Abstract), the clinician system comprising: a database comprising questions, answer and follow-up actions (Brown: Col. 5, Ln. 55-62);  
a display (Brown: Col. 4, Ln. 43-51);  
a processor (Brown: Col. 6, Ln. 64-Col. 7, Ln. 9) ; and

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a graphical user interface executed by the processor and presented on the display comprising (Brown: Figure 9 and Col. 4, Ln. 43-51)

a selection component for selecting a question, answer or follow-up action from the database (Brown: Figure 5 and Col. 5, Ln. 28-39);

an icon generator for generating and displaying an icon associated with the selected question, answer or follow-up action (Brown: Col. 5, Ln. 52-62);

a linking component for linking displayed icon (Brown: Figure 5 and Col. 5, Ln. 35-39);

and

a conversion component for converting linked displayed icons into a script program (Brown: Col. 5, Ln. 39-62);

a sending component for sending the script program to a patient device over a communication network (Brown: Col. 5, Ln. 63-Col. 6, Ln. 4).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8 and 17 rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of US Patent Application Publication 2002/0010597 to Mayer.

(A) As per claims 8 and 17, Brown does not teach that the data related to the physical condition of the individual comprises electronic medical claims received from a health-care provider of the individual (Figure 5 and Section [0046]). At the time of the invention, it would

have been obvious for one of ordinary skill in the art to have modified the system and method of Brown by adding the aforementioned feature from Mayer with the motivation of providing an enhanced computerized tool for maintaining and managing various aspects of patients' healthcare as recited in Mayer (Section [0003]).

***Conclusion***

6. Any inquire concerning this communication or earlier communications from the examiner should be directed to Vivek Koppikar, whose telephone number is (571) 272-5109. The examiner can normally be reached from Monday to Friday between 8 AM and 4:30 PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, Joseph Thomas, can be reached at (571) 272-6776. The fax telephone number for this group is (703) 305-7687 (for official communications including After Final communications labeled "Box AF").

Another resource that is available to applicants is the Patent Application Information Retrieval (PAIR). Information regarding the status of an application can be obtained from the (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAX. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see [http://pair-](http://pair)

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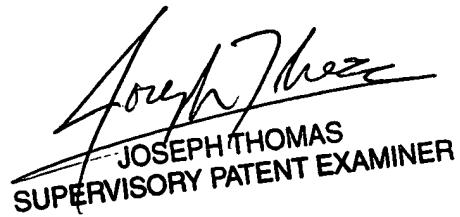
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direct.uspto.gov. Should you have questions on access to the Private PAIR system, please feel free to contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sincerely,

VK  
Vivek Koppikar

11/14/2005

  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER